

**OPINION
72-137**

April 12, 1972 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Elections - Absent Voters - Application Forms

This is in response to your letter in which you request an opinion on the following question:

"Whether a voter wishing to use an absentee ballot may make use of the application form published in newspapers as an alternative to requesting such form from their county auditor."

North Dakota has provided for an absentee ballot for a great number of years with the obvious purpose of making the elective franchise available to all who are entitled to vote. Section 16-18-05 provides when and how an application for an absentee ballot is to be made. Section 16-18-06 provides as is material to the question as follows:

"Application for such ballot shall be made on a blank to be furnished by the proper officer of the county, city, or school district of which the applicant is an elector and must be substantially in the following form:" (Then follows the form in which the application is to be made.)

The language "such ballot shall be made on a blank to be furnished by the proper officer" constitutes a directive or mandate to the officer to make the forms available. We do not believe that this language should be construed to mean that no one else may provide the application blank. It imposes an affirmative duty upon such officer to make the blank available.

Section 16-18-07 provides as is material here as follows:

"The officers specified in section 16-18-05, upon request, shall send an application blank for an absent voter's ballot to an absent voter by mail, or they may deliver such application blank to such voter upon a personal application made at his office."

We also take into account that Senate Bill 2438 was introduced in the last legislative assembly which would have tightened the provisions pertaining to requests for absentee ballots. This bill, however, was indefinitely postponed.

In reviewing the various statutory provisions in Chapter 16-18, we arrive at the conclusion that the Legislature intended to provide for a procedure which will make it possible for every elector to vote without undue hardship. Neither do we believe that the provisions of said chapter were designed to put rigid technical procedures into effect, but rather that the statutory provisions be construed to accomplish the intent of the Legislature.

Where the Legislature has designated the form to be used in applying for an absentee ballot, we are inclined to believe that the substantive matter in the form would be controlling rather than who provided the form. It is the substantive material in the application form which should be controlling. In this respect, it would make little difference where the form is obtained or who prepared the form, provided it meets the requirements of Section 16-18-06.

It is therefore our opinion that those voters wishing to use an absentee ballot may make use of the application form published in a newspaper as an alternative to requesting such form from the proper officer such as the county auditor, auditor or clerk of the city or clerk of the school district.

HELGI JOHANNESON

Attorney General